

1 MCLAIN PC  
2 ERIK MCLAIN SBN 219008  
3 7545 IRVINE CENTER DRIVE, SUITE 200  
4 IRVINE, CA 92616  
5 Telephone: (949) 500-2818

6  
7 Attorneys for Plaintiffs  
8 SWAG MERCHANDISING INC. AND  
9 DEVO INC.

10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  

**UNITED STATES DISTRICT COURT**  
**CENTRAL DISTRICT OF CALIFORNIA**

29 SWAG MERCHANDISING, INC., a  
30 California Corporation; DEVO INC., a  
31 California Corporation;

32 Plaintiffs,

33 v.

34 DEMAND MEDIA, INC., a Delaware  
35 Corporation; and DOES 1-10,  
36 INCLUSIVE;

37 Defendants.

38 Case No.: 2:14-cv-03078

39  
40  
41  
42  
43  
44  
45  
46  
47  
48  
49  
50  
51  
52  
53  
54  
55  
56  
57  
58  
59  
60  
61  
62  
63  
64  
65  
66  
67  
68  
69  
70  
71  
72  
73  
74  
75  
76  
77  
78  

Case No.: 2:14-cv-03078  
COMPLAINT FOR:  
  
**1.) Violation of Lanham Act;  
2.) Trademark Infringement;  
3.) Counterfeiting;  
4.) Dilution;  
5.) Business & Professions Code 17200;  
6.) Civil Code Section 3344  
7.) Common Law Right of Publicity  
8.) Conversion**

79  
80  
81  
82  
83  
84  
85  
86  
87  
88  
89  
90  
91  
92  
93  
94  
95  
96  
97  
98  
99  
100  

**DEMAND FOR JURY TRIAL**

101 Plaintiffs SWAG MERCHANDISING, INC., a California Corporation; DEVO INC.,  
102 a California Corporation; allege the following based on information and belief:

103  
104  
105  
106  
107  
108  
109  
110  
111  
112  
113  
114  
115  
116  
117  
118  
119  
120  
121  
122  
123  
124  
125  
126  
127  
128  

**GENERAL ALLEGATIONS.**

129  
130  
131  
132  
133  
134  
135  
136  
137  
138  
139  
140  
141  
142  
143  
144  
145  
146  
147  
148  
149  
150  
151  
152  
153  
154  
155  
156  
157  
158  
159  
160  
161  
162  
163  
164  
165  
166  
167  
168  
169  
170  
171  
172  
173  
174  
175  
176  
177  
178  
179  
180  
181  
182  
183  
184  
185  
186  
187  
188  
189  
190  
191  
192  
193  
194  
195  
196  
197  
198  
199  
200  
201  
202  
203  
204  
205  
206  
207  
208  
209  
210  
211  
212  
213  
214  
215  
216  
217  
218  
219  
220  
221  
222  
223  
224  
225  
226  
227  
228  
229  
230  
231  
232  
233  
234  
235  
236  
237  
238  
239  
240  
241  
242  
243  
244  
245  
246  
247  
248  
249  
250  
251  
252  
253  
254  
255  
256  
257  
258  
259  
260  
261  
262  
263  
264  
265  
266  
267  
268  
269  
270  
271  
272  
273  
274  
275  
276  
277  
278  
279  
280  
281  
282  
283  
284  
285  
286  
287  
288  
289  
290  
291  
292  
293  
294  
295  
296  
297  
298  
299  
300  
301  
302  
303  
304  
305  
306  
307  
308  
309  
310  
311  
312  
313  
314  
315  
316  
317  
318  
319  
320  
321  
322  
323  
324  
325  
326  
327  
328  
329  
330  
331  
332  
333  
334  
335  
336  
337  
338  
339  
340  
341  
342  
343  
344  
345  
346  
347  
348  
349  
350  
351  
352  
353  
354  
355  
356  
357  
358  
359  
360  
361  
362  
363  
364  
365  
366  
367  
368  
369  
370  
371  
372  
373  
374  
375  
376  
377  
378  
379  
380  
381  
382  
383  
384  
385  
386  
387  
388  
389  
390  
391  
392  
393  
394  
395  
396  
397  
398  
399  
400  
401  
402  
403  
404  
405  
406  
407  
408  
409  
410  
411  
412  
413  
414  
415  
416  
417  
418  
419  
420  
421  
422  
423  
424  
425  
426  
427  
428  
429  
430  
431  
432  
433  
434  
435  
436  
437  
438  
439  
440  
441  
442  
443  
444  
445  
446  
447  
448  
449  
450  
451  
452  
453  
454  
455  
456  
457  
458  
459  
460  
461  
462  
463  
464  
465  
466  
467  
468  
469  
470  
471  
472  
473  
474  
475  
476  
477  
478  
479  
480  
481  
482  
483  
484  
485  
486  
487  
488  
489  
490  
491  
492  
493  
494  
495  
496  
497  
498  
499  
500  
501  
502  
503  
504  
505  
506  
507  
508  
509  
510  
511  
512  
513  
514  
515  
516  
517  
518  
519  
520  
521  
522  
523  
524  
525  
526  
527  
528  
529  
530  
531  
532  
533  
534  
535  
536  
537  
538  
539  
540  
541  
542  
543  
544  
545  
546  
547  
548  
549  
550  
551  
552  
553  
554  
555  
556  
557  
558  
559  
5510  
5511  
5512  
5513  
5514  
5515  
5516  
5517  
5518  
5519  
5520  
5521  
5522  
5523  
5524  
5525  
5526  
5527  
5528  
5529  
5530  
5531  
5532  
5533  
5534  
5535  
5536  
5537  
5538  
5539  
55310  
55311  
55312  
55313  
55314  
55315  
55316  
55317  
55318  
55319  
55320  
55321  
55322  
55323  
55324  
55325  
55326  
55327  
55328  
55329  
55330  
55331  
55332  
55333  
55334  
55335  
55336  
55337  
55338  
55339  
55340  
55341  
55342  
55343  
55344  
55345  
55346  
55347  
55348  
55349  
55350  
55351  
55352  
55353  
55354  
55355  
55356  
55357  
55358  
55359  
55360  
55361  
55362  
55363  
55364  
55365  
55366  
55367  
55368  
55369  
55370  
55371  
55372  
55373  
55374  
55375  
55376  
55377  
55378  
55379  
55380  
55381  
55382  
55383  
55384  
55385  
55386  
55387  
55388  
55389  
55390  
55391  
55392  
55393  
55394  
55395  
55396  
55397  
55398  
55399  
553100  
553101  
553102  
553103  
553104  
553105  
553106  
553107  
553108  
553109  
553110  
553111  
553112  
553113  
553114  
553115  
553116  
553117  
553118  
553119  
553120  
553121  
553122  
553123  
553124  
553125  
553126  
553127  
553128  
553129  
553130  
553131  
553132  
553133  
553134  
553135  
553136  
553137  
553138  
553139  
553140  
553141  
553142  
553143  
553144  
553145  
553146  
553147  
553148  
553149  
553150  
553151  
553152  
553153  
553154  
553155  
553156  
553157  
553158  
553159  
553160  
553161  
553162  
553163  
553164  
553165  
553166  
553167  
553168  
553169  
553170  
553171  
553172  
553173  
553174  
553175  
553176  
553177  
553178  
553179  
553180  
553181  
553182  
553183  
553184  
553185  
553186  
553187  
553188  
553189  
553190  
553191  
553192  
553193  
553194  
553195  
553196  
553197  
553198  
553199  
553200  
553201  
553202  
553203  
553204  
553205  
553206  
553207  
553208  
553209  
553210  
553211  
553212  
553213  
553214  
553215  
553216  
553217  
553218  
553219  
553220  
553221  
553222  
553223  
553224  
553225  
553226  
553227  
553228  
553229  
553230  
553231  
553232  
553233  
553234  
553235  
553236  
553237  
553238  
553239  
553240  
553241  
553242  
553243  
553244  
553245  
553246  
553247  
553248  
553249  
553250  
553251  
553252  
553253  
553254  
553255  
553256  
553257  
553258  
553259  
553260  
553261  
553262  
553263  
553264  
553265  
553266  
553267  
553268  
553269  
553270  
553271  
553272  
553273  
553274  
553275  
553276  
553277  
553278  
553279  
553280  
553281  
553282  
553283  
553284  
553285  
553286  
553287  
553288  
553289  
553290  
553291  
553292  
553293  
553294  
553295  
553296  
553297  
553298  
553299  
553300  
553301  
553302  
553303  
553304  
553305  
553306  
553307  
553308  
553309  
553310  
553311  
553312  
553313  
553314  
553315  
553316  
553317  
553318  
553319  
553320  
553321  
553322  
553323  
553324  
553325  
553326  
553327  
553328  
553329  
553330  
553331  
553332  
553333  
553334  
553335  
553336  
553337  
553338  
553339  
5533310  
5533311  
5533312  
5533313  
5533314  
5533315  
5533316  
5533317  
5533318  
5533319  
55333100  
55333101  
55333102  
55333103  
55333104  
55333105  
55333106  
55333107  
55333108  
55333109  
55333110  
55333111  
55333112  
55333113  
55333114  
55333115  
55333116  
55333117  
55333118  
55333119  
553331100  
553331101  
553331102  
553331103  
553331104  
553331105  
553331106  
553331107  
553331108  
553331109  
553331110  
553331111  
553331112  
553331113  
553331114  
553331115  
553331116  
553331117  
553331118  
553331119  
5533311100  
5533311101  
5533311102  
5533311103  
5533311104  
5533311105  
5533311106  
5533311107  
5533311108  
5533311109  
5533311110  
5533311111  
5533311112  
5533311113  
5533311114  
5533311115  
5533311116  
5533311117  
5533311118  
5533311119  
55333111100  
55333111101  
55333111102  
55333111103  
55333111104  
55333111105  
55333111106  
55333111107  
55333111108  
55333111109  
55333111110  
55333111111  
55333111112  
55333111113  
55333111114  
55333111115  
55333111116  
55333111117  
55333111118  
55333111119  
553331111100  
553331111101  
553331111102  
553331111103  
553331111104  
553331111105  
553331111106  
553331111107  
553331111108  
553331111109  
553331111110  
553331111111  
553331111112  
553331111113  
553331111114  
553331111115  
553331111116  
553331111117  
553331111118  
553331111119  
5533311111100  
5533311111101  
5533311111102  
5533311111103  
5533311111104  
5533311111105  
5533311111106  
5533311111107  
5533311111108  
5533311111109  
5533311111110  
553331111111

1 group DEVO's various trademarks, copyrights, and individual rights of publicity.

2       2. Plaintiff DEVO, INC. ("DEVO") is, and at all times relevant hereto was, a  
3 corporation duly organized and existing under the laws of California, and duly licensed  
4 to conduct business within the State of California. At all times relevant to this  
5 Complaint, DEVO owned the internationally recognized musical group DEVO's  
6 intellectual property, including trademarks, copyrights and rights of publicity.

7       3. Plaintiffs are informed and believe, and on that basis, allege that Defendant  
8 DEMAND MEDIA, INC. is a corporation organized and existing pursuant to Delaware  
9 Law and regularly conducts business online, and within the jurisdictional locale of Los  
10 Angeles, CA. Moreover, Defendant DEMAND MEDIA maintains its corporate  
11 headquarters and location within Los Angeles County, State of California.

12       4. Plaintiffs are informed and believe that Defendant DEMAND MEDIA is in  
13 the business of manufacturing, marketing and distributing apparel and memorabilia  
14 based on, among other things, classic and current television programming and/or musical  
15 categories. In particular DEMAND MEDIA is the sole owner and the operator of the  
16 website SOCIETY6.com through which it committed the acts complained of.

17       5. Plaintiffs are ignorant of the true names, capacities, and bases for liability of  
18 Defendants DOES 1 through 10, inclusive, and therefore sue said Defendants by their  
19 fictitious names. Plaintiffs will amend this Complaint to allege their true names,  
20 capacities, or bases for liability when the same has been ascertained. Plaintiffs are  
21 informed and believe, and thereon alleges, that Defendants, DOES 1 through 10,  
22 inclusive, and each of them, are in some manner liable to Plaintiffs.

23       6. At all times relevant to this action, each Defendant, including those  
24

1 fictitiously named, was the agent, servant, employee, partner, joint venturer, or surety of  
2 the other Defendants, and was acting within the scope of said agency, employment,  
3 partnership, venture, or doing the things alleged herein.  
4

## 5 JURISDICTION AND VENUE

6 7. This is an action arising under the Lanham Act, 15 U.S.C. § 1125(a), and the  
California Civil Code.

8 8. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C.  
9 §§ 1331, 1338(a) and 1367, and 15 U.S.C. § 1121.

10 9. Venue is proper in this judicial district and division pursuant to 28  
U.S.C. § 1391(b) and 28 U.S.C. § 1400(a).

11 10. Defendants are subject to personal jurisdiction in this District Court because it  
12 regularly maintains its corporate headquarters in the State of California, County of Los  
13 Angeles and regularly conducts business within this same locale.

## 14 FACTUAL BACKGROUND

15 9. Plaintiff DEVO, as a broadly recognized unique musical talent, as well as  
fame and prominence has acquired sufficient commercial rights of substantial value  
16 associated with DEVO's name, image, and likeness, as well as various trademarks and  
copyrights. These rights are proprietary rights recognized and protected by the common  
17 law, federal statutes and by certain trademarks and copyrights registered in the United  
18 States as well as various foreign countries.

19 10. SWAG is the exclusive licensing agent in and to the rights associated with  
DEVO's name, image, likeness, certain trademark rights, both international and  
20 domestic, in and to the name and image of DEVO, and certain copyrights related to  
21

1 DEVO and its music.

2       11. As the licensor of the DEVO Intellectual Property, SWAG licenses the  
3 DEVO Intellectual Property to third parties, interested in trading off of and/or associating  
4 with the recognition of DEVO by using the DEVO Intellectual Property in association  
5 with the third parties' products or services.  
6

7       12. In association with its rights as exclusive licensor, SWAG polices against  
8 third party unauthorized uses of the DEVO Intellectual Property by entities or individuals  
9 that seek to unfairly and unlawfully utilize the benefits associated with DEVO's  
10 Intellectual Property without prior express authorization from DEVO and/or SWAG. At  
11 all times relevant, SWAG has licensed, used, and protected the DEVO Intellectual  
12 Property from misuse.  
13

14       13. Defendants do not now have, nor have they ever had, permission from  
15 DEVO or SWAG to commercially exploit the DEVO Intellectual Property in any  
16 manner.  
17

18       14. Defendants DEMAND MEDIA are manufacturing, producing, marketing,  
19 advertising, and/or retailing unlicensed products which are commonly known by  
20 consumers to be associated with DEVO. These products include Art Prints; Framed Art  
21 Prints; Stretched Canvases; T-Shirts; Tank Tops; Kids T-Shirts; Onesies; Throw Pillows;  
22 Tote Bags; Wall Clocks; and Shower Curtains ("Unauthorized Merchandise") each  
23 bearing the name "DEVO" and the likeness of the Energy Dome hat.  
24

25       15. The Unauthorized Merchandise are sufficiently associated with, and  
26 attributable to the DEVO likeness and consumers coming into contact with the  
27 Unauthorized Merchandise AND would immediately associate these with the DEVO  
28

likeness, name, and/or property.

16. SWAG, as the exclusive agent for DEVO's Intellectual Property has licensed third parties to create similar products as well as the "Energy Dome Hats" which are identical and/or substantially similar in appearance, shape, form, size as to be nearly indistinguishable from the products manufactured, distributed, and sold by Defendants.

17. Defendants' manufacturing, production, marketing, and sale of the Unauthorized Merchandise, without prior express authorization is highly injurious to SWAG's ability to license the DEVO Intellectual Property by tarnishing the name and reputation of DEVO.

## FIRST CAUSE OF ACTION

**(Violation of §43(a) (15 U.S.C. §1125(a)) of the Lanham Act)**

18. PLAINTIFFS incorporate herein by reference, as though fully set forth below, each and every previous and subsequent paragraph of this Complaint.

19. Each and every one of the Defendants' actions as alleged herein constitutes false designation of origin, affiliation or sponsorship in violation of 15 U.S.C. §1125(a).

20. DEVO is the lawful owner and registrant of the trademarks registered with the United States Trademark registration nos. 3161662 and 3167516. The unauthorized use of DEVO's Intellectual Property and name and likeness, constitutes a false designation of origin and a false description or representation that wrongfully and falsely designates the services and products offered as originating from DEVO, or being associated, with or approved or sponsored by DEVO.

21. As an actual and proximate cause of Defendants' wrongful acts, Plaintiffs have suffered and will continue to suffer harm to Plaintiffs' intellectual property, trademarks,

1 business reputation, and goodwill. Defendants will continue, unless enjoined, to conduct its  
2 business using the DEVO Intellectual Property, including but not limited to trademarks  
3 3161662 and 3167516 and will otherwise cause irreparable harm to Plaintiffs. Therefore,  
4 Plaintiffs are entitled to injunctive relief restraining Defendants from engaging in further acts  
5 of false designation of origin, affiliation or sponsorship.

6  
7 22. In addition to injunctive relief, Plaintiffs are further entitled to recover from  
8 Defendants the actual damages sustained by Plaintiffs. Plaintiffs are unable to ascertain the  
9 exact amount of damages incurred or likely to be incurred at this time, but said damages  
10 exceed the jurisdictional minimum of this Court.  
11

12 23. Defendants are further entitled to recover from Defendants the gains, profits,  
13 and advantages that Defendants have realized as a result of the wrongful acts complained of  
14 herein.  
15

16 24. Due to the voluntary and willful nature of Defendants' wrongful acts, Plaintiffs  
17 are entitled to an award of treble damages and increased profits pursuant to 15 U.S.C. Section  
18 1117.  
19

20 25. Plaintiffs are entitled to recover their attorneys fees and costs of suit pursuant to  
21 15 U.S.C. Section 1117.  
22

### **SECOND CAUSE OF ACTION**

#### **(Trademark Infringement 15 U.S.C. §1114 and Common Law)**

23 26. Plaintiffs incorporate herein by reference, as though fully set forth below, each  
24 and every previous and subsequent paragraph of this Complaint.  
25

26 27. Defendants have used in commerce, without Plaintiffs' permission, the DEVO  
27 Intellectual Property, including but not limited to the registered trademarks nos. 3161662 and  
28

1 3167516, in a manner that is likely to cause confusion with respect to the source and origin of  
2 Defendants' business and is likely to cause confusion to the public concerning the affiliation,  
3 connection, approval or sponsorship of SWAG or DEVO and Defendants' unauthorized  
4 merchandise.  
5

6 28. Each of Defendants' acts constitutes willful infringement of the DEVO  
7 Intellectual Property, including but not limited to the marks 3161662 and 3167516 in  
8 violation of 15 U.S.C. 1114 and the common law.

9 29. As a direct and proximate result of Defendants' wrongful acts, Plaintiffs have  
10 suffered and continue to suffer damage to their trademark, business reputation, and goodwill.  
11 Defendants will continue, unless enjoined, to conduct its business using the DEVO  
12 Intellectual Property, including but not limited to trademarks 3161662 and 3167516 and will  
13 otherwise cause irreparable harm to Plaintiffs. Therefore, Plaintiffs are entitled to injunctive  
14 relief restraining Defendants from engaging in further acts of false designation of origin,  
15 affiliation or sponsorship.  
16  
17

18 30. In addition to injunctive relief, Plaintiffs are further entitled to recover from  
19 Defendants the actual damages sustained by Plaintiffs. Plaintiffs are unable to ascertain the  
20 exact amount of damages incurred or likely to be incurred at this time, but said damages  
21 exceed the jurisdictional minimum of this Court.  
22

23 31. Defendants are further entitled to recover from Defendants the gains, profits,  
24 and advantages that Defendants have realized as a result of the wrongful acts complained of  
25 herein.  
26

27 32. Due to the voluntary and willful nature of Defendants' wrongful acts, Plaintiffs  
28 are entitled to an award of treble damages and increased profits pursuant to 15 U.S.C. Section  
29

1 1117.

2 33. Plaintiffs are entitled to recover their attorneys' fees and costs of suit pursuant  
3 to 15 U.S.C. Section 1117.

5 **THIRD CAUSE OF ACTION**

6 **(Counterfeiting 15 U.S.C. §1114(a))**

7 34. Plaintiffs incorporate herein by reference, as though fully set forth below, each  
8 and every previous and subsequent paragraph of this Complaint.

9 35. Defendants have used in commerce marks which are identical with or  
10 substantially indistinguishable from the DEVO Intellectual Property, including Trademark  
11 registration nos. 3161662 and 3167516.

12 36. The DEVO Intellectual Property, including the registered trademarks are currently  
13 in use and registered on the Principal Registrar for the same class of goods as being used in  
14 connection with Defendants' counterfeit marks.

15 37. At all times mentioned herein, Defendants' use of counterfeit copies of the DEVO  
16 Intellectual Property, including but not limited to the registered marks, was not authorized by  
17 Plaintiffs.

18 38. Defendants' acts constitute willful trademark counterfeiting in violation of 15  
19 U.S.C. Section 1114.

20 39. Defendants intentionally used counterfeits of the DEVO Intellectual Property,  
21 including the registered trademarks with knowledge that the marks were counterfeit, because  
22 Defendants had no authority to use the DEVO Intellectual Property, or the registered marks.  
23 Such conduct constitutes willful trademark counterfeiting of the marks in United States  
24 Trademark registration nos. 3161662 and 3167516.

1           40. Defendants have made or will make substantial profits by virtue of its unlawful  
2 conduct and for which, Defendants are not entitled.

3           41. As a direct and proximate result of Defendants' wrongful acts, Plaintiffs have  
4 suffered and continue to suffer damage to their trademark, business reputation, and goodwill.  
5 Defendants will continue, unless enjoined, to conduct its business using the DEVO  
6 Intellectual Property, including but not limited to trademarks 3161662 and 3167516 and will  
7 otherwise cause irreparable harm to Plaintiffs. Therefore, Plaintiffs are entitled to injunctive  
8 relief restraining Defendants from engaging in further acts of false designation of origin,  
9 affiliation or sponsorship.

10          42. In addition to injunctive relief, Plaintiffs are further entitled to recover from  
11 Defendants the actual damages sustained by Plaintiffs. Plaintiffs are unable to ascertain the  
12 exact amount of damages incurred or likely to be incurred at this time, but said damages  
13 exceed the jurisdictional minimum of this Court.

14          43. Defendants are further entitled to recover from Defendants the gains, profits,  
15 and advantages that Defendants have realized as a result of the wrongful acts complained of  
16 herein.

17          44. Due to the voluntary and willful nature of Defendants' wrongful acts, Plaintiffs  
18 are entitled to an award of treble damages and increased profits pursuant to 15 U.S.C. Section  
19 1117(b).

20          45. Plaintiffs are entitled to recover their attorneys' fees and costs of suit pursuant  
21 to 15 U.S.C. Section 1117.

22          46. Alternatively, Plaintiffs are entitled to recover statutory damages pursuant to  
23 U.S.C. Section 1117(c).

## **FOURTH CAUSE OF ACTION**

**(Dilution 15 U.S.C. §1125(c))**

47. Plaintiffs incorporate herein by reference, as though fully set forth below, each and every previous and subsequent paragraph of this Complaint.

48. The DEVO Intellectual Property, and the marks registered as nos. 3161662 and 3167516, have acquired distinction and strong secondary meaning through extensive, continuous, and exclusive use of the DEVO Intellectual Property, including but not limited to the marks in the United States Trademark registration nos. 3161662 and 3167516 before Defendants began their unauthorized commercial use and promotion of these rights.

49. The DEVO Intellectual Property, including but not limited to the registered marks are famous and distinctive within the meaning of 15 U.S.C. Section 1125(c)(1).

50. Defendants' use of the DEVO Intellectual Property and the registered marks, has caused and is likely to cause dilution by blurring and dilution by tarnishment of the DEVO Intellectual Property, including the registered marks in violation of 15 U.S.C. Section 1125 (c).

51. As a direct and proximate result of Defendants' wrongful acts, Plaintiffs have suffered and continue to suffer damage to their trademark, business reputation, and goodwill. Defendants will continue, unless enjoined, to conduct its business using the DEVO Intellectual Property, including but not limited to trademarks 3161662 and 3167516 and will otherwise cause irreparable harm to Plaintiffs. Therefore, Plaintiffs are entitled to injunctive relief restraining Defendants from engaging in further acts of false designation of origin, affiliation or sponsorship.

52. In addition to injunctive relief, Plaintiffs are further entitled to recover from

1 Defendants the actual damages sustained by Plaintiffs. Plaintiffs are unable to ascertain the  
2 exact amount of damages incurred or likely to be incurred at this time, but said damages  
3 exceed the jurisdictional minimum of this Court and are believed no less than \$300,000.  
4

5 53. Defendants are further entitled to recover from Defendants the gains, profits,  
6 and advantages that Defendants have realized as a result of the wrongful acts complained of  
7 herein.

8 54. Due to the voluntary and willful nature of Defendants' wrongful acts, Plaintiffs  
9 are entitled to an award of treble damages and increased profits pursuant to 15 U.S.C. Section  
10 1117.  
11

12 55. Plaintiffs are entitled to recover their attorneys' fees and costs of suit pursuant  
13 to 15 U.S.C. Section 1117.

14 **FIFTH CAUSE OF ACTION**

15 **(Violation of California Business & Professions Code Section 17200)**

16 56. Plaintiffs incorporate herein by reference, as though fully set forth below, each  
17 and every previous and subsequent paragraph of this Complaint.  
18

19 57. Defendants' acts and practices as detailed above constitute acts of unfair  
20 competition. Defendants have engaged in an unlawful, unfair or fraudulent business act  
21 and/or practice within the meaning of California Business & Professions Code §17200.  
22

23 58. Defendants have engaged in an "unlawful" business act and/or practice by  
24 engaging in the conduct set forth above. These business acts and practices violated numerous  
25 provisions of law, including, *inter alia*, state and federal laws as set forth above.

26 59. Through the above-described conduct, Defendants have engaged in an "unfair"  
27 business act or practice in that the justification for such actions and the refusal to notify the  
28

1 general public of the true facts, either in the past or presently, based on the business acts and  
2 practices described above is outweighed by the gravity of the resulting harm, particularly  
3 considering the available alternatives, and/or offends public policy, is immoral, unscrupulous,  
4 unethical and offensive, or causes substantial injury to consumers.  
5

6 60. By engaging in the above-described conduct, Defendants have engaged in a  
7 "fraudulent" business act or practice in that the business acts and practices described above  
8 had a tendency and likelihood to deceive the general public.

9 61. Pursuant to California Business & Professions Code §17203, Plaintiffs, seek a  
10 temporary, preliminary and/or permanent order from this Court prohibiting Defendants from  
11 refusing to continue to engage in the unlawful, unfair, or fraudulent business acts or practices  
12 set forth in this Complaint and from failing to fully disclose the true facts as set forth herein,  
13 and or ordering Defendants or their representatives to stop misleading the public and engage  
14 in a corrective campaign, particularly in light of the public misperception created by  
15 Defendants' and/or their representatives' misstatements and omissions of material fact, as well  
16 as provide appropriate equitable monetary relief as the court deems just and appropriate to all  
17 persons with a vested interest therein.  
18

20 **SIXTH CAUSE OF ACTION**

21 **(Right of Publicity Infringement Under California Civil Code Section 3344)**

22 62. Plaintiffs incorporate herein by reference, as though fully set forth below, each  
23 and every previous and subsequent paragraph of this Complaint.

25 63. DEVO is the real party in interest and may duly exercise and enforce the DEVO  
26 Intellectual Property, including but not limited to the DEVO right of publicity, pursuant to  
27 California Civil Code 3344.  
28

1       64. Because the Defendants have used the DEVO Intellectual Property, including  
2 the DEVO right of publicity, on and/or in connection with the advertising, marketing,  
3 production, distribution, and/or sale of the Unauthorized Merchandise without Plaintiffs'  
4 prior express consent, Defendants are in violation of California Civil Code Section 3344.  
5

6       65. Defendants have knowingly, maliciously, and intentionally engaged in conduct  
7 prohibited by California Civil Code Section 3344.

8       66. DEVO's rights have been and will continue to be irreparably harmed by  
9 Defendants unless they are enjoined from further continued use of the DEVO Intellectual  
10 Property, including DEVO's rights of publicity. DEVO's remedy of law is inadequate to  
11 prevent further violation of its rights.  
12

### **SEVENTH CAUSE OF ACTION**

#### **(Common Law Right of Publicity)**

15       67. Plaintiffs incorporate herein by reference, as though fully set forth below, each  
16 and every previous and subsequent paragraph of this Complaint.  
17

18       68. DEVO is a famous entity with a unique identity and likeness that is  
19 commercially exploited by Plaintiffs under license and protected from misuse by third parties,  
20 such as Defendants, desiring to associate themselves and/or their goods and services with  
21 DEVO.  
22

23       69. DEVO's image, likeness, name comprises a combination of many features  
24 carefully cultivated by DEVO's professional career. It is these features by which DEVO is  
25 universally recognized and remembered and pursuant to which the DEVO Intellectual  
26 Property is valued.  
27

28       70. Defendants' knowing, intentional, willful, and malicious unauthorized

1 commercial exploitation of the DEVO Intellectual Property, including the DEVO right of  
2 publicity, constitutes a violation of the common law right of publicity.

3 71. Plaintiffs' rights have been and will continue to be irreparably harmed by  
4 Defendants unless Defendants are enjoined from their further continued use of the DEVO  
5 Intellectual Property, including the right of publicity.

6 72. Plaintiffs have suffered damages in an amount to be proven at trial.

7 **EIGHTH CAUSE OF ACTION**

8 **(Conversion)**

9 73. Plaintiffs incorporate herein by reference, as though fully set forth below, each  
10 and every previous and subsequent paragraph of this Complaint.

11 74. By engaging in the conduct described above, Defendants have exerted  
12 unauthorized control and dominion over the property of DEVO with intent to deprive  
13 Plaintiffs of its benefits.

14 75. Defendants' actions have caused harm to Plaintiffs in a sum to be proven at the  
15 time of trial.

16 **DEMAND FOR JURY TRIAL**

17 1. Plaintiffs hereby demand a jury by trial on all applicable causes of action  
18 alleged in this Complaint.

19 **PRAYER FOR RELIEF:**

20 24 **WHEREFORE PLAINTIFFS** pray for judgment against Defendants, and each of  
21 them, as follows:

22 26 1. An injunction enjoining Defendants from future use of the DEVO Intellectual  
23 Property, including but not limited to the marks registered as nos. 3161662 and 3167516 and  
24 the DEVO Right of Publicity;

- 1        2. An Order directing the immediate and complete surrender of any and all
- 2        merchandise, designs, plans, marketing materials, advertisements, conceptual, etc. featuring
- 3        the DEVO Intellectual Property, including but not limited to the marks registered as nos.

4 | 3161662 and 3167516 and the DEVO Right of Publicity;

5           3. An award of all damages owed to Plaintiff as prescribed by law in an amount to  
6 be proven at trial;

7           4. An award of treble damages, punitive damages, costs of suit, prejudgment interest,  
8 and attorneys' fees; and

9 ||| 5. For such other and further relief as the Court deems equitable and proper

11 | Dated: April 15, 2014

McLAIN PC

By:

Erik McLain

Attorneys for Plaintiffs